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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 672/2015*, **

Communication submitted by:	John Alfred Vogel (represented by counsel, Tony Ellis)
Alleged victim:	The complainant
State party:	New Zealand
Date of complaint:	5 January 2015
Date of decision:	14 November 2017
Subject matter:	Solitary confinement
Procedural issue:	State party's reservation to article 14
Substantive issues:	Cruel, inhuman or degrading treatment or punishment; right to fair and adequate compensation
Articles of the Convention:	14 and 16

1.1 The complainant is John Alfred Vogel, a national of New Zealand born in 1965. He claims that the prolonged solitary confinement to which he was subjected and the denial of his right to adequate compensation therefor constitute a violation by New Zealand of articles 14 and 16 of the Convention. The complainant is represented by counsel.

1.2 Upon ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 10 December 1989, the State party entered a reservation to article 14. The reservation states that the Government of New Zealand reserves the right to award compensation to torture victims at the sole discretion of the Attorney General of New Zealand.

The facts as presented by the complainant

2.1 On 26 February 1998, the complainant was sentenced to life imprisonment after having been found guilty of murder. After serving 10 years of the sentence, he was released on parole on 4 May 1998. In January 2000, however, he was recalled to prison after having been convicted on further charges.[1]

* Adopted by the Committee at its sixty-second session (6 November–6 December 2017).

** The following members of the Committee participated in the examination of the communication: Essadia Belmir, Alessio Bruni, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Sébastien Touzé and Kening Zhang.

[1] See High Court of New Zealand, *John Alfred Vogel v. the Attorney-General*, judgment of 24 February 2012.

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2.2 On 11 April 2000, a visiting justice imposed 21 days of cell confinement on the complainant for drug-related disciplinary offences — namely, a positive drug test result for cannabinoids and two refusals to provide urine samples. The complainant notes that this sanction was in violation of domestic legislation, as under section 33 (3) (g) of the Penal Institutions Act 1954 the maximum period for which cell confinement can be imposed is 15 days. The complainant notes that he was confined to his cell for 23 hours a day during the period he spent in solitary confinement. He was given only one hour a day to exercise and take a shower. He had no access to radio or television, although he did have access to reading material. He could not make telephone calls or receive visitors, and, in practice, his ability to meet other people was severely restricted, as no other inmate was held in the same part of the prison. He submits that he was particularly vulnerable at the time, as he was suffering from chronic depression and drug addiction. He began speaking to himself in his cell. He argues that he should not have been subjected to solitary confinement.

2.3 In October 2004, the complainant brought a civil suit before the New Zealand High Court alleging that the sanction of cell confinement had violated his rights under the New Zealand Bill of Rights Act 1990. He claimed that the cell confinement to which he had been subjected exceeded the maximum sanction established by law and that it had amounted to a violation of his rights under sections 9 (right not to be subjected to torture or cruel, degrading or disproportionately severe treatment or punishment) and 23 (5) (the right of persons deprived of liberty to be treated with humanity and with respect for the inherent dignity of the person) of the Bill of Rights Act. He argued that he had not been provided with adequate medical care during the time he spent in cell confinement, as he had not had access to a doctor. In its judgment of 24 February 2012, the Court found that the visiting justice did not have the power to impose 21 days of cell confinement on the complainant, as section 33 (3) (g) of the Penal Institutions Act provides for a sanction of cell confinement for a period of no more than 15 days. The Court also found that the reason the maximum period was exceeded by six days was that the complainant had requested the justice to impose a sanction of 21 days so that he could deal with his drug addiction before an upcoming parole hearing. The Court further found that the prison administration had breached regulation 56 (b) of the Penal Institutions Regulations, according to which the administration was under an obligation to ensure that medical officers were promptly notified when prisoners were in cell confinement. However, the Court did not find a breach of sections 9 and 23 of the Bill of Rights Act, as the sanction had been imposed at the complainant's request and had not been intended to cause him to suffer. There was no evidence that the sanction had in fact caused the complainant pain or suffering, and it had not been degrading or humiliating. The Court found that all inmates at the prison had access to doctors upon request and that the complainant had had such access, as demonstrated by the fact that he had been taken to the hospital between 19 and 20 April 2000 to undergo a liver biopsy. It noted that nurses checked detainees in cell confinement every day.

2.4 The complainant appealed the judgment to the Court of Appeal of New Zealand. On 7 November 2013, the Court found that his rights under section 23 (5) of the Bill of Rights Act and section 33 (3) (g) of the Penal Institutions Act had been violated. The Court noted that the complainant's medical records suggested that, in 2000, he was suffering from chronic depression, for which he was being treated with an antidepressant.[2] The Court stated that the complainant's request to the visiting justice to impose a 21-day period of cell confinement was irrelevant and that it was for the justice to ensure not only that the sanction did not exceed the statutory maximum but also that it could safely be imposed. The Court found that what was known about the complainant's addiction and mental condition should have underlined the potentially harmful effects of an excessive period of cell confinement on his mental well-being. The Court therefore found that the unlawful sanction had entailed a failure to treat the complainant with humanity and respect for his inherent dignity, in violation of his rights under section 23 (5) of the Bill of Rights Act. The Court nonetheless found that there had not been a breach of the complainant's rights under section 9 of the Bill of Rights Act. The Court did not award the complainant damages. It

[2] According to the judgment of the Court of Appeal, a note dated 25 February 2000 in the complainant's medical record under the heading "Diagnosis", read: "Dysthymia. Previous diagnosis of attention deficit hyperactivity disorder and chronic issues relating to past abuse".

noted that the violation had occurred 13 years before the judgment, a lapse of time that, in its view, made calculating the amount of the award problematic. The Court noted, however, that the complainant would have had a case for a small award had he followed the procedure for requesting compensation set out in the Prisoners' and Victims' Claims Act 2005. It noted that the complainant had failed to apply for compensation under that complaints mechanism — that is, by making a complaint to the Ombudsman — and that the Court was therefore unable to award him damages under section 13 of the Act.[3] The complainant lodged an application for leave to appeal the decision not to award him damages before the Supreme Court. That application was dismissed on 19 February 2014.

The complaint

3.1 The complainant notes that the imposition of a 21-day period of solitary confinement was a clear breach of the State party's domestic legislation. He argues that the sanction amounted to prolonged solitary confinement.[4] The complainant notes that the Court of Appeal found that the sanction was in breach of his rights under article 23 (5) of the Bill of Rights Act and that he had not been treated with humanity or respect for his inherent dignity. He argues that, in placing a mentally ill and vulnerable prisoner in solitary confinement for longer than the statutory maximum period, the State party violated his rights under article 16 of the Convention. He submits that solitary confinement should be used only in exceptional circumstances and that no such circumstances were present in his case. He claims that, at the time, he was suffering from depression and drug addiction and that he should not have been placed in solitary confinement at all. He argues that his confinement for a period in excess of the statutory maximum period heightens the seriousness of the breach constituted by his placement in cell confinement in the first place. He claims that while he was in confinement he experienced physical and mental suffering that amounted to cruel and inhuman treatment.

3.2 The complainant alleges that the State party has violated his rights under article 14 of the Convention. He notes that, although the Court of Appeal found that he had not been treated with humanity and dignity, it did not award him damages. He refers to the Committee's general comment No. 3 (2012) on the implementation of article 14, according to which article 14 is applicable to all victims of torture and acts of cruel, inhuman or degrading treatment or punishment. The complainant argues that one reason that the Court of Appeal did not award him damages was that, at the time of its judgment, the violation had occurred more than a decade earlier. The complainant refers to general comment No. 3 and argues that the State party has an obligation to provide redress to victims of torture or ill-treatment, regardless of when the violation occurred.

3.3 The complainant notes that the other reason that the Court of Appeal did not award damages was that he had not made a claim under the Prisoners' and Victims' Claims Act. He argues that the Act itself is contrary to the purpose of the Convention, as damages may be awarded under the Act only if a court or tribunal is satisfied that the prisoner has first made reasonable use of available internal and external complaints mechanisms.[5] He also

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[3] Section 13 (1) of the Prisoners' and Victims' Claims Act reads as follows:

> (1) No court or tribunal may, in proceedings to which this subpart applies, award any compensation sought by a specified claim unless satisfied that —
>
> (a) the plaintiff has made reasonable use of all of the specified internal and external complaints mechanisms reasonably available to him or her to complain about the act or omission on which the claim is based, but has not obtained in relation to that act or omission redress that the court or Tribunal considers effective; and
>
> (b) another remedy, or a combination of other remedies, cannot provide, in relation to the act or omission on which the claim is based, redress that the court or Tribunal considers effective.

[4] The complainant refers to A/66/268, para. 26, in which prolonged solitary confinement is defined as any period of solitary confinement in excess of 15 days. It is noted that 15 days is the limit between solitary confinement and prolonged solitary confinement because, at that point, according to the literature surveyed, some of the harmful psychological effects of isolation can become irreversible.

[5] Under section 7 of the Prisoners' and Victims' Claims Act, specified internal and external complaint mechanisms are defined as the relevant prison's internal complaints system; investigation of a complaint by a person appointed as an inspector of corrections; and in relation only to a matter that is

argues that the Act is incompatible with the Convention because, under the Act, prompt rehabilitation and compensation and equal access to justice are impossible, as compensation is subject to debt deductions and possible claims against the prisoner made by third parties.[6] He notes that because it is subject to deductions, any compensation will be frozen for six months and placed in trust pending the resolution of any potential third-party claim against the prisoner. The complainant contends that prisoners are the only group whose right to compensation is conditional on deduction of any debts or claims made by third parties and that, by subjecting compensation to the conditions under the Act, the State party fails to provide substantive, comprehensive and individualized reparations and redress to prisoners who are victims of torture or ill-treatment, in violation of article 14 of the Convention.

3.4 The complainant notes that the State party has entered a reservation to article 14 of the Convention. He refers to general comment No. 3, in which it is stated that the Committee considers reservations that seek to limit the application of article 14 to be incompatible with the object and purpose of the Convention. He submits that his claim under article 14 is therefore admissible.

State party's observations on admissibility and the merits

4.1 On 13 October 2015, the State party submitted its observations on the admissibility and merits of the complaint. The State party submits that the complainant's claim under article 14 is inadmissible because the State party has entered a reservation to article 14. The State party further submits that the complainant's rights under articles 14 and 16 of the Convention have not been violated.

4.2 The State party argues that its reservation to article 14 of the Convention is permissible because it is not incompatible with the object and purpose of the Convention. It argues that the reservation does not deny victims of torture the right to compensation. It simply gives the Attorney-General rather than the courts or other actors the power to make decisions about compensation awards. The State party submits that the Attorney-General exercises his or her functions independently of the Government and that any decision made would therefore be apolitical and would not result in the inappropriate denial of compensation to a victim of torture.

4.3 The State party submits that the cell confinement of the complainant does not constitute a breach of article 16 in the circumstances of the case. It notes that the complainant alleges that his rights under article 16 were violated on the basis of the decision of the Court of Appeal, which had found that his rights under section 23 (5) of the Bill of Rights had been violated. The State party submits that section 23 (5) of the Act is not equivalent to article 16 of the Convention. It notes that the Bill of Rights contains two rights that together establish a hierarchy of rights of detainees in relation to their conditions of detention. Section 9 prohibits torture and cruel, degrading and disproportionately severe treatment or punishment, while section 23 (5) imposes a positive obligation to treat detainees with humanity and respect for their inherent dignity. The State party notes that the Court of Appeal found that there had been no breach of section 9 of the Bill of Rights Act, which is the right in the Act that is most similar to article 16 of the Convention. Rather, it found that the State had breached its positive obligation under section 23 (5), as the prison authorities should have prevented the complainant, because of his vulnerability, from voluntarily choosing to be confined to his cell for 21 days. It also notes that the complainant did not seek to appeal the Court's finding that his placement in cell confinement had not constituted a breach of section 9 of the Bill of Rights Act.

4.4 The State party submits that, in the complainant's case, neither the length nor the conditions of confinement amount to a breach of article 16. It refers to the jurisprudence of the Human Rights Committee and notes that that Committee has found violations of articles

not more properly within the jurisdiction of another authority, official agency or body, or statutory officer, investigation by an Ombudsman or by an employee of the Office of the Ombudsman of a complaint under the Ombudsmen Act 1975.

[6] The complainant notes that, under the Act, deductions can be made for civil debts such as an obligation to repay legal aid, orders for reparation imposed on the prisoner at the time of the sentence and any outstanding amounts owed to the prisoner's victims.

7 and 10 (1) of the International Covenant on Civil and Political Rights in circumstances considerably more extreme than the complainant's case.[7] The State party submits that, in the complainant's case, the cell confinement was voluntary and the conditions were humane. It notes that conditions of cell confinement in the prison in which the complainant was held were described before the domestic courts by the acting prison manager, who had stated that cell confinement involved keeping prisoners in cells away from their usual units. The cells were essentially the same as the cells in other units in terms of windows, light and fittings, and although books were allowed, television and radio were not. Prisoners could hear but not easily converse with prisoners in nearby cells. Prisoners in cell confinement had access to water and toilet facilities in their cells, and their usual meals were delivered to them during the day. They were allowed one hour a day outside to shower and exercise in the yard. Prisoners were entitled to send and receive mail and continued to have all the other minimum entitlements, except personal (non-statutory) visits or telephone calls. The State party notes that the complainant made no complaints about the conditions of confinement at the time and argues that there is evidence that he was properly looked after and supervised by custodial and health staff during the time he spent in cell confinement.

4.5 The State party notes that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has noted that prolonged solitary confinement may amount to a breach of article 16 of the Convention, depending on the circumstances of the case. It also notes that the Special Rapporteur found that the assessment of whether solitary confinement amounts to torture and other cruel, inhuman or degrading treatment should take into consideration all relevant circumstances on a case-by-case basis, including the purpose of the application of solitary confinement, the conditions, length and effects of the treatment and the subjective conditions of each victim that make him or her more or less vulnerable to those effects.[8] The State party submits that, in the circumstances of the case, the 21 days of solitary confinement imposed at the request of the complainant did not amount to a breach of article 16 and that there has consequently been no violation of article 14 of the Convention.

4.6 As regards the complainant's claim under article 14 of the Convention, the State party notes that the domestic courts have recognized that victims of breaches of the Bill of Rights Act are entitled to an effective remedy, which may include compensation.[9] Any compensation to prisoners is subject to the Prisoners' and Victims' Claims Act. The State party notes that in the complainant's case, the Court of Appeal found that he would have been entitled to damages but for his failure to comply with section 13 (1) of the Act. Although the Court noted that calculation of the amount of the award would be problematic, that was not the reason it had not awarded damages. The State party argues that the Act does not deny a prisoner who is a victim of torture an enforceable right to compensation; it merely sets out preconditions for the award of compensation. It also argues that the complainant would have been entitled to compensation had he first used other complaints mechanisms, including the mechanism available through the Ombudsman's Office. The State party refers to the judgment of the Court of Appeal and notes that the Court found that,

[7] The State party refers to Human Rights Committee, communication No. 88/1981, *Larrosa Bequio v. Uruguay*, in which the Committee found that the fact that the author had been allowed to receive only one visit from October 1980 to March 1981, that he had been held in a small cell without windows, where the artificial light was left on 24 hours a day, and that he had been kept in solitary confinement for over a month disclosed violations of articles 7 and 10 (1) of the Covenant. The Committee also took into account the State party's failure to provide any of the information it had requested, including court decisions and health information relating to the prisoner, and the absence of confirmation that the prisoner had been given an opportunity to communicate with the Committee. The State party also refers to Human Rights Committee, communication No. 109/1981, *Gómez de Voituret v. Uruguay* and *Polay Campos v. Peru* (CCPR/C/61/D/577/1994), in which the Committee found that solitary confinement of six and nine months constituted violations of article 10 of the Covenant but not of article 7. The State party nonetheless notes that, in the latter case, the Committee found that solitary confinement of one year without communication with the outside world contravened article 7.

[8] The State party refers to A/66/268.

[9] The State party refers to the Court of Appeal of New Zealand, *Simpson v. the Attorney-General (Baigent's Case)*, judgment of 29 July 1994.

although the author had requested an interview with the Ombudsman on 9 July 2000, he had later withdrawn the request. The State party also notes that the complainant did not file a claim in the courts until October 2004 and that the matter was not heard by the High Court until 2012. The State party contends that the complainant had ample opportunity to make a complaint to the prison authorities or the Ombudsman before filing a claim with the Courts and in the period between the submission and consideration of his claim by the High Court.

4.7 The State party notes that the complainant alleges that the right to receive compensation is limited because the Prisoners' and Victims' Claims Act requires that certain debts owed by the prisoner be paid out of the compensation. The State party argues that the requirement is not a limitation of the right to obtain compensation, as the debts are incurred by the prisoner separate to any right to obtain compensation. It argues that the Prisoners' and Victims' Claims Act sets up an efficient process to ensure that the prisoner repays those debts. It also notes that the complainant alleges that the Act fails to provide for substantive, comprehensive and individualized reparations. The State party argues that if a prisoner with a legitimate claim fulfils the preconditions of complaining through appropriate mechanisms, he or she will be entitled to substantive, comprehensive and individualized reparation as determined by the Court.

Complainant's comments on the State party's observations

5.1 In his comments on the State party's observations, which he submitted on 21 January 2016, the complainant reiterates his argument that the State party's reservation to article 14 is incompatible with the object and purpose of the Convention and that the Committee should therefore find the complaint under article 14 to be admissible. The complainant also reiterates his view that the 21 days he spent in solitary confinement amounted to a violation of his rights under article 16. He contends that he did not appeal the Court of Appeal's finding that the confinement did not amount to a breach of section 9 of the Bill of Rights to the Supreme Court — a point highlighted by the State party — because doing so would have been futile, as periods of solitary confinement longer than 21 days had not been found to be in violation of section 9 of the Bill of Rights in a number of previous cases.

5.2 The complainant further notes the State party's argument that he was not awarded damages by the Court of Appeal because he had not made a claim under the Prisoners' and Victims' Claims Act. He claims that the Act is itself a bar to effective compensation, as the Inspector of Corrections and the Ombudsman are not lawfully able to award compensation, and that the obligation to exhaust that particular complaints mechanism first is a discriminatory hurdle in the way of compensation. He claims that those complaints mechanisms are valuable for minor complaints but not for more serious ones. He notes that the offices responsible for complaints mechanisms are understaffed.[10] The complainant again notes that any compensation awarded under the Act is subject to deductions and a six-month freeze. He claims that this process demeans prisoners and delays the receipt of any compensation that may be awarded. He notes that non-prisoners filing suit before the State party's courts for violations of their rights under the Bill of Rights are not required to first submit complaints to the Ombudsman and that any damages they are awarded are not placed in trust for six months.

5.3 The complainant reiterates his claim that solitary confinement exceeding 15 days constitutes inhuman and degrading treatment and notes that rule 43 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) prohibits prolonged solitary confinement. He also notes that, under rule 44, prolonged solitary confinement is defined as confinement in excess of 15 consecutive days. The complainant requests the Committee to incorporate in its jurisprudence the view that solitary

[10] The complainant refers to CAT/OP/NZL/1, in which the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment noted that most of the components of the national preventive mechanism had not received extra resources to carry out their mandate under the Optional Protocol to the Convention against Torture, a problem that, together with general staff shortages, had severely impeded their ability to fulfil that mandate.

confinement in excess of 15 consecutive days constitutes a violation of article 16. According to the complainant, the time he spent in confinement was damaging to his mental health.[11]

5.4 The complainant asks the Committee to find that his rights under articles 14 and 16 of the Convention were violated and to request the State party to provide him with adequate compensation and to repeal the Prisoners' and Victims' Claims Act. He calls on the Committee to find that the State party's reservation to article 14 of the Convention is incompatible with the Convention.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the present case, the State party has not contested that the complainant has exhausted all available domestic remedies. The Committee therefore finds that it is not precluded from considering the communication under article 22 (5) (b) of the Convention.

6.3 The Committee notes the State party's submission that the complainant's claim under article 14 of the Convention should be found inadmissible because of the State party's reservation to article 14. The Committee also notes the complainant's submission that the State party's reservation to article 14 is incompatible with the object and purpose of the Convention.[12] The reservation entered by New Zealand to article 14, however, specifies that the authority responsible for awarding the compensation to torture victims referred to in article 14 of the Convention is the Attorney-General. Accordingly, the reservation does not apply to the subject matter of the complaint under review, and the Committee is not precluded from considering the complainant's claim under article 14 of the Convention.

6.4 As the Committee finds no further obstacles to admissibility, it declares the communication submitted under articles 14 and 16 of the Convention admissible and proceeds with its consideration of the merits.

Consideration of the merits

7.1 The Committee has considered the present communication in the light of all the information made available to it by the parties concerned, in accordance with article 22 (4) of the Convention.

7.2 In the present case, the first issue before the Committee is whether holding the complainant in solitary confinement for 21 days amounted to cruel, inhuman or degrading treatment or punishment and thus constituted a violation of article 16 of the Convention. The Committee is of the view that solitary confinement may amount to a violation of article 16, depending on the circumstances of the case and taking into account the particular conditions of solitary confinement, the stringency of the measure, its duration, the objective pursued and its effect on the person concerned.[13] The Committee recalls its

[11] The complainant refers to his affidavit before the domestic courts, in which he stated that, when he emerged from solitary confinement, the hair in his nostrils and his whiskers had turned white and grey and that, when friends of his who had not seen him while he had been in solitary saw him, they had asked what had happened, as it was obvious that he looked different. He also stated in the affidavit that solitary confinement had not been mentally healthy for him and that, when he had been let out, he had found himself slightly madder than before.

[12] See CAT/C/NZL/CO/6, para. 20; and CAT/C/NZL/CO/5, para. 14.

[13] See *A.A. v. Denmark* (CAT/C/49/D/412/2010), para. 7.4.

recommendation that solitary confinement and seclusion should be used as measures of last resort, for as short a time as possible, under strict supervision and with the possibility of judicial review.[14] In the present case, the Committee notes that the complainant was placed in solitary confinement for 21 days, a period that is indisputably longer than the statutory maximum in the State party. The Committee also notes the complainant's argument that he was confined to his cell for 23 hours a day during the period he spent in solitary confinement, with one hour a day for exercise and to shower. He had no access to radio or television, although he did have access to reading material. He was not allowed to make telephone calls or receive visitors. The Committee further notes the complainant's claim that he was particularly vulnerable at the time, as he suffered from chronic depression and drug addiction, and that the confinement caused him mental anguish. The Committee acknowledges the State party's argument that the complainant was placed in cell confinement was at his own request, that the conditions were humane, that the complainant made no complaints about the conditions of confinement at the time, that he was supervised by custodial and health staff during the period of cell confinement, that he was entitled to send and receive mail and had access to reading material and that the cell he was held in had essentially the same features in terms of windows, light and fittings as the cell he was otherwise held in.

7.3 The Committee notes that the State party's argument that the cell confinement was imposed at the complainant's own request was found irrelevant by the Court of Appeal, which ruled that it was the responsibility of the visiting justice to ensure that the sanction imposed did not exceed the statutory maximum and that it could be safely be imposed. The Court found that what was known about the complainant's addiction and mental condition should have underlined the potentially harmful effects of an excessive period of cell confinement on his mental well-being. The Committee further notes the complainant's assertion that the sanction caused him mental suffering and affected him physically. The Committee finds that, in view of the complainant's chronic depression, which was known to the authorities, and drug addiction, the solitary confinement that he was subjected to and the length of time for which he was subjected to it were not proportionate to the objective pursued. The Committee therefore finds that the solitary confinement imposed on the complainant amounted to a violation of his rights under article 16 of the Convention.

7.4 The Committee notes that the complainant has also claimed that the failure of the State party's courts to award him compensation constituted a violation of his rights under article 14. The Committee recalls its general comment No. 3 and notes that article 14 is applicable to all victims of torture and ill-treatment. The Committee further recalls that article 14 not only recognizes the right to fair and adequate compensation but also requires States parties to ensure that the victim of an act of torture or ill-treatment obtains redress. The Committee considers that redress should cover all the harm suffered by the victim, including restitution, compensation, rehabilitation of the victim and measures to guarantee that there is no recurrence of the violations, with the circumstances of each case always borne in mind.[15] The Committee notes that in the present case the complainant, alleging that his rights under the New Zealand Bill of Rights Act had been violated and seeking damages for the violation, brought a civil suit before the domestic courts. The Court of Appeal was of the view that the complainant had a strong case for a small award but was unable to award damages under the Prisoners' and Victims' Claims Act, as the complainant had not followed the complaints procedure set out in the Act, which required filing a complaint with the Ombudsman's Office. The complainant contends that the requirement is a discriminatory obstacle to compensation; however, in the light of his withdrawal of his request for an interview with the Ombudsman, the Committee finds that, in the circumstances of the case, requiring the complainant to exhaust the avenues for complaint provided for in the Prisoners' and Victims' Claims Act did not constitute a denial of his enforceable right to compensation or amount to a violation of his rights under the Convention. The Committee therefore does not find a violation of the complainant's rights under article 14 of the Convention.

[14] See, for example, CAT/C/NZL/CO/6.

[15] See *Saadia Ali v. Tunisia* (CAT/C/41/D/291/2006), para. 15.8.

8. The Committee against Torture, acting under article 22 (7) of the Convention, is of the view that the facts before it disclose a violation of article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

9. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee urges the State party to ensure that the complainant receives fair and adequate compensation, including the means for as full a rehabilitation as possible, and to inform it, within 90 days from the date of the transmittal of the present decision, of the steps it has taken to respond to the above observations.